

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement is hereby entered into by and between Evelyn Wimberley and David's Firewood (hereinafter "David's"), with Wimberley and David's collectively referred to as the "Parties" and each of them as a "Party." Wimberley is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. David's employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1.2 Allegations and Representations

(a) Wimberley alleges that David's has offered for sale in the State of California and that David's customers, Lowes HIW, Inc ("Lowes") among others, have sold in California, New Mexico Pinon Wood that when used as intended produces combustion byproducts carbon monoxide and soot, and that such sales have not been accompanied by Proposition 65 warnings. Carbon monoxide and soot are listed under Proposition 65 as chemicals known to the State of California to cause cancer and birth defects or other reproductive harm. Wimberley has cited UPC852780000554 as a specific example of the New Mexico Pinon Wood that is the subject of her allegations.

(b) For purposes of this Settlement Agreement only, David's Firewood represents that:

- 1) UPC852780000554 is marketed as a Firewood manufactured by David's Firewood ("Producers") and distributed to Lowes and others; and 2) Producers had no reason to believe that the item required warnings under Prop 65 for Carbon monoxide and soot until receiving Wimberley's Notice on April 27, 2017.

(c) Producers deny the material, factual and legal allegations contained in the Notices, and maintains that all products sold, distributed or offered for sale in California have been and are in compliance with all laws, including, without limitation, Proposition 65.

(d) The Parties enter into this Settlement Agreement to resolve all Proposition 65 claims concerning Producer's products set forth in Wimberley's Notice, including claims against Producer's customers, including Lowes who received the Notice alleging violations of Proposition 65 resulting from their distribution and/or sale of Producer's products in California.

1.3 Covered Items

The products that are covered by this Settlement Agreement are defined as New Mexico Pinon Firewood UPC852780000554. All such New Mexico Pinon Firewood shall be referred to herein as the "Products."

1.4 Notice of Violation

On or about April 27, 2017 Wimberley served Producers, Lowes, and all public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Producers, Lowes, and such public enforcers with notice that alleged that Producers and Lowes were in alleged violation of Proposition 65 for failing to warn consumers and customers that the Products exposed users in California to Carbon monoxide and soot. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus service time relative to the provision of the Notice to them by Wimberley.

1.5 No Admission

Producers deny the material allegations contained in Wimberley's Notice and complaint and maintain that it has not violated Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Producers of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Producers of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Producers. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Producers under this Settlement Agreement.

1.6 Execution Date

1.6.1 For purposes of this Settlement Agreement, the term "Execution Date" shall mean

the date this Settlement Agreement is fully executed.

1.6.2 For purposes of this Settlement Agreement, the term 'Effective Date' shall mean the date that Prop 65 warnings shall be implemented pursuant to Article 2.

2. COMPLIANCE

2.1 Warning Option. The Products shall be deemed to comply with Proposition 65 with regard to carbon monoxide and soot and be exempt from any Proposition 65 warning requirements for carbon monoxide and soot if the Products from which exposures to Carbon monoxide and soot are labeled with the following: "**California Proposition 65 Warning:** This product contains wood dust. Inhalation of wood dust is known to the State of California to cause cancer. Burning wood results in the emission of carbon monoxide , soot, smoke, and other combustion by-products that are known by the State of California to cause cancer, birth defects, reproductive harm or other adverse health effects.

2.2 The warning provided pursuant to Section 2.1 shall, within 60 days of the Execution Date, be prominently displayed on the Covered Product with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual prior to sale. ("Effective Date"). The warning shall be contained in the same section that states other safety warnings concerning the use of the product and shall be at least the same size as those other safety warnings.

3. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)

With regard to all claims that have been raised or which could be raised with respect to failure to warn pursuant to Proposition 65 with regard to Carbon monoxide and soot in the Products, Producers shall pay a civil penalty of \$ 1,000.00 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to Wimberley, as provided by California Health & Safety Code § 25249.12(d) and the instructions directly below.

Producers shall wire the penalty payment: (a) one wire made payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of the total penalty (i.e., \$750.00); and (b) one wire in an amount representing 25% of the total penalty (i.e., \$250.00) made payable directly to Wimberley. Producers shall wire these payments in accordance with

section 4.3, to the The Law Offices of Stephen Ure, PC.

4. REIMBURSEMENT OF FEES AND COSTS

4.1 The Parties reached an accord on the compensation due to Wimberley and her counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Producers shall reimburse Wimberley's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Producers's attention, and negotiating a settlement in the public interest. Producers shall pay Wimberley's counsel \$20,000.00 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice. Producers shall provide said monies to the "Law Offices of Stephen Ure, PC" (tax identification number 42-1641673) in accordance with section 4.3 . The Law Offices of Stephen Ure, PC will provide Producers with tax identification and bank wire information prior to the Execution Date. Other than the payment required hereunder, each side is to bear its own attorneys' fees and costs.

4.2 Time is of the essence with regard to the receipt of payments specified in Article 3 and 4 herein. If payments are not made as agreed this agreement shall, in its entirety, be null and void.

4.3 Payments under the terms of this agreement will be made on the following dates:

August 18, 2017 - \$7,000.00

September 18, 2017 - \$7,000.00

October 18, 2017 - \$7,000.00

5. CLAIMS COVERED AND RELEASED

5.1 Release of Producers and Downstream Customers

Wimberley, on behalf of herself, releases Producers and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but not limited to, Sport Chalet), franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees") from all claims for violations of Proposition 65 up through the Effective Date based

on exposure to Carbon monoxide and soot from the Products as set forth in her Notice of Violation. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to Carbon monoxide and soot from the Products.

In addition to the foregoing, Wimberley, on behalf of herself, her past and current agents, representatives, attorneys, and successors and/or assignees, and not in her representative capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases any other Claims that she could make against Producers or its Releasees arising up to the Effective Date as such claims relate to the alleged failure to warn with respect to the Products under Health & Safety Code Section 25249.6.

5.2 David's Firewood Release of Wimberley

Producers waive any and all claims against Wimberley, her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Wimberley and her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

6. SEVERABILITY AND MERGER

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this document are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

7. GOVERNING LAW

7.1 This Settlement Agreement shall be interpreted in accordance with the plain English meaning of its terms and the construction thereof shall be governed by the laws in force

in the State of California, USA without regard to conflicts of law principles and Producers hereby irrevocably consent to personal jurisdiction and exclusive venue in San Diego Superior Court to resolve any disputes hereunder; and hereby appointing the pertinent Secretary of State or other applicable government authority as agent for receiving service of process. This Settlement Agreement resolves any issue, now or in the future, with the requirements of Proposition 65 with respect to alleged exposures to carbon monoxide and soot arising from the Products. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Producers shall provide written notice to Wimberley of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

7.2 This Settlement Agreement shall apply to and be binding upon Wimberley and Producers, its divisions, subdivisions, and subsidiaries, if any, and the Parties' successors and assigns.

7.3 The Parties, including their counsel, have participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. This Settlement Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by the other Party at the following addresses:

For David's Firewood:
Mr. David Whitener, Owner
707 SR523

Clovis, NM 88101

and

For Wimberley:

Stephen Ure
Law Offices of Stephen Ure, PC.
11622 El Camino Real, Suite 100
San Diego, California 92130

Any Party, from time to time, may specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

9. **COUNTERPARTS; FACSIMILE SIGNATURES**

The stipulations to this Settlement Agreement may be executed in counterparts and by means of facsimile and/or portable document format (pdf), which taken together shall be deemed to constitute one document

10. **COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Wimberley agrees to comply with the requirements set forth in California Health & Safety Code §25249.7(f).

11. **MODIFICATION**

This Settlement Agreement may be modified only by further stipulation of the Parties and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

12. **ENFORCEMENT OF SETTLEMENT AGREEMENT**

Either Party may bring an action to enforce the terms of this Settlement Agreement. A Party who unsuccessfully brings or contests an action arising out of this Settlement Agreement shall be required to pay the prevailing Party's reasonable attorney's fees and costs unless the unsuccessful Party has acted with substantial justification. For purposes of this Settlement Agreement, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

13. **REPORTED SALES**

13.1 Producers represent and warrant that it believes that the maximum number of

Covered Products shipped to Lowes and other California retailers for sale in California during 2016-2017 was 26,928 units.

13.2 ACCURACY OF SALES DATA

Producers understand that the sales data provided to counsel for Wimberley by Producers was a material factor upon which Wimberley has relied to determine the amount of payments made pursuant to Health and Safety Code §25249.7(b) under this Agreement. Producers represent that it has provided true and accurate sales data to plaintiff to the best of its ability.

14. ENTIRE AGREEMENT


This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Settlement Agreement have been made by any Party hereto. No supplementation, modification, waiver, or termination of this Settlement Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Settlement Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

15. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document.

APPROVED AS TO FORM:

Dated: August 18, 2017


By: William L. Miltner
Attorneys for Defendants,
David's Firewood

Dated: August _____, 2017

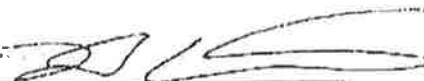
LAW OFFICES OF STEPHEN URE, PC
By: _____
Stephen Ure
Attorneys for Plaintiff,
EVELYN WIMBERLEY

AGREED TO:

Date: _____

Date: 8-17-17

By: _____
EVELYN WIMBERLEY


By: _____
David's Firewood

Dated: August _____, 2017

By: _____
William L. Miltner
Attorneys for Defendants,
David's Firewood

Dated: August 18, 2017

LAW OFFICES OF STEPHEN URE, PC
By: _____
Stephen Ure
Attorneys for Plaintiff,
EVELYN WIMBERLEY

AGREED TO:

Date: August 18, 2017

Date: _____

By: _____
EVELYN WIMBERLEY

By: _____
David's Firewood